

SEP 26 2006

Attorney's Docket No.: 10559-494001  
Client's Ref. No.: P11786

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Applicant : James R. Trethewey  
Serial No. : 09/955,469  
Filed : September 18, 2001

Art Unit : 2151  
Examiner : Khanh Dinh

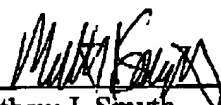
Title : LOAD BALANCING AND FAULT TOLERANCE FOR SERVER-BASED  
SOFTWARE APPLICATIONS

**Mail Stop Appeal Brief – Patents**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

A Reply Brief dated September 26, 2006 is attached.

Respectfully submitted,

Date: September 26, 2006

  
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Conf. No. : 7738

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REPLY BRIEF

Pursuant to 37 C.F.R. § 41.41, Applicant/Appellant responds to the Examiner's Answer  
as follows:

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Appellant has reviewed the Examiner's Answer mailed July 26, 2006, and provides this brief in reply. Appellant continues to rest on its principal Brief on Appeal but notes that the Examiner, at this stage in prosecution as in earlier stages, has provided little substantive argument to address Appellant's bona fide attempts to advance prosecution. Three examples are provided.

First, in Appellant's principal Brief on Appeal, Appellant argued that the cited references—U.S. Pat. No. 6,801,949 ("Bruck") and U.S. Pat. No. 5,774,560 ("Brendel")—do not disclose a method wherein "a message comprising a unique real network address of an assigned server for a service session is transmitted to a remote computer," then analyzed in detail Bruck and Brendel, providing numerous citations to portions of the text and figures. In response, as the Examiner has done throughout prosecution, the Examiner relied on previously issued rejections—largely copied and pasted from previous Office Actions—with little substantive rebuttal of Appellant's arguments. See, for example, the Examiner's response to argument, section 10.1 (Examiner's Answer, mailed July 26, 2006, at pages 14-15), in which much of the text was taken directly from previous Office Actions (albeit slightly reordered). New text (e.g., "the four servers can dynamically reconfigure traffic assignments of virtual IP addresses among themselves and provide network availability and improved server response to client machine over the Internet, see fig.3, col. 7 line 11 to col.8 line 49") does not address Appellant's argument that the cited references do not teach that a unique *real* network address is *transmitted to a remote computer*.

Second, Appellant, in the principal Brief on Appeal, identified ambiguity in the Examiner's rejection of claim 15, then addressed each of two possible interpretations of the Examiner's ambiguous rejections. In response, the Examiner expressed disagreement that there was any ambiguity in the rejection, then reiterated his position that "Bruck discloses 'the packet based message... transmitted by the assigned server.'" For support, the Examiner pointed to FIG. 3 and its corresponding description at col. 7, line 11 to col. 8, line 50. This figure and section do not appear to be relevant to Appellant's arguments. Appellant understands FIG. 3 to depict "four machines 302, 304, 306, 308 that act as a server cluster 310" (col. 7, lines 15-17) and "internal host machines 330, 332, 334 behind the server cluster" (col. 8, lines 28-29).

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Appellant finds no description in the identified portion of Bruck of an assigned server transmitting a packet-based message to the remote computer. Rather, Appellant understands this section to describe operations *internal* to the server cluster 310 that provide "fail-over capability." (Col. 8, line 42.)


Third, Appellant argued in the principal Brief on Appeal that Bruck and Brendel teach away from the remote networked computer using a real network address of an assigned server during a service session, and Appellant provided specific reasons why the Examiner's combination and modification of Bruck and Brendel is not desirable. In response, the Examiner reiterated previous positions (*see* Examiner's Answer, mailed July 26, 2006, at pages 16-20), rather than directly rebutting Appellant's teaching-away arguments.

For these reasons, and the reasons stated in the principal Brief on Appeal, Applicant/Appellant respectfully submits that the final rejection should be reversed and the pending claims allowed.

Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: SEPTEMBER 26, 2006

  
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